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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,602	12/20/2001	Larry G. Jones	VTN-569	1238
27777	7590	03/04/2004	EXAMINER	
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			STULTZ, JESSICA T	
			ART UNIT	PAPER NUMBER
			2873	

DATE MAILED: 03/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/027,602

Applicant(s)

JONES ET AL.

Examiner

Jessica T Stultz

Art Unit

2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 5-6, 9-10, and 12-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Zhang.

Regarding claims 1-2, 5-6, 9-10, and 12-13, Zhang discloses an ophthalmic contact lens for a lens wearer (Column 2, lines 42-60, wherein the contact lens is “10”, Figure 2), comprising a first refractive surface (Column 2, line 7, which discloses the spiral pattern achieving a refractive index change, i.e. the optical corrective surface as refractive), comprising an optic zone having an area of distance optical power and second refractive surface having an area of plano power in a second optical zone, an area of near optical power on the front surface of the lens (Column 1, lines 14-29 and Column 2, lines 42-60, wherein the contact lens “10” is a multifocal lens which would contain distance, plano, and near optical powers, which contains both distance and near optical powers, specifically the differing dioptric powers of the spiral pattern that correct for myopia and hyperopia located on the front “anterior surface” of the lens “12”, Figure 2), with a spiral pattern on its front surface (Column 2, lines 2-60, wherein the spiral area is shown as band “20” on lens “10”, Figure 2). Regarding the spiral pattern having near power interspersed in the distance power of the lens, the near power region will inherently be “interspersed” within the distance power in a continuous manner throughout the spiral as

Art Unit: 2873

disclosed (Column 2, lines 2-60, wherein the spiral area is shown as band "20" on lens "10", Figure 2). With reference to the claimed "spherical" distance and "spherical" near optical power, the multifocal power generated by Zhang, i.e. the distance and near optical power generated by Zhang, would inherently be "spherical" distance optical power and "spherical" near optical power, this being reasonably based upon Zhang disclosing using a changing refractive index within the spiraling pattern i.e. a "refractive surface" (Column 3, lines 35-46) to create the distance and near optical power and not using a toric surface nor using this pattern to correct astigmatism or to generate cylindrical power.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zhang in view of Juhasz.

Regarding claims 1-2, 5-6, 9-10, and 12-13 Zhang discloses an ophthalmic contact lens for a lens wearer (Column 2, lines 42-60, wherein the contact lens is "10", Figure 2), comprising a first refractive surface (Column 2, line 7, which discloses the spiral pattern achieving a refractive index change, i.e. the optical corrective surface as refractive), comprising an optic zone having an area of distance optical power and second refractive surface having an area of plano power in a second optical zone, an area of near optical power on the front surface of the lens (Column 1, lines 14-29 and Column 2, lines 42-60, wherein the contact lens "10" is a

Art Unit: 2873

multifocal lens which would contain distance, plano, and near optical powers, which contains both distance and near optical powers, specifically the differing dioptric powers of the spiral pattern that correct for myopia and hyperopia located on the front “anterior surface” of the lens “12”, Figure 2), with a spiral pattern on its front surface (Column 2, lines 2-60, wherein the spiral area is shown as band “20” on lens “10”, Figure 2), but does not specifically disclose that the spiral pattern is an area of near optical power. Juhasz teaches of a method for vision correction using near optical powers made by laser ablation on the surface of a person’s eye in the shape of a spiral (Column 5, line 16-Column 6, line 13, wherein myopia is corrected by forming a spiral path on the eye using laser ablation, Figure 4) to correct for myopia, i.e. near-sighted vision (Column 5, lines 24-26). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made for the lens of Zhang to further include the spiral pattern comprising the near distance optical power since Juhasz teaches of a method for vision correction using near optical powers made by laser ablation on the surface of a person’s eye in the shape of a spiral to correct for myopia, i.e. near-sighted vision. With reference to the claimed “spherical” distance and “spherical” near optical power, the multifocal power generated by Zhang, i.e. the distance and near optical power generated by Zhang, would inherently be “spherical” distance optical power and “spherical” near optical power, this being reasonably based upon Zhang disclosing using a changing refractive index within the spiraling pattern i.e. a “refractive surface” (Column 3, lines 35-46) to create the distance and near optical power and not using a toric surface nor using this pattern to correct astigmatism or to generate cylindrical power.

Art Unit: 2873

Regarding claim 3, it would have been obvious that the ophthalmic lens of Zhang and Juhasz would further include a second refractive surface that provides cylinder power since it is well known in the art of contact lens to make soft contact lens in a toric shape of cylindrical power to correct for the wearer's astigmatism. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made for the ophthalmic lens of Zhang and Juhasz to further include a second refractive surface that provides cylinder power since it is well known in the art of contact lens to make soft contact lens in a toric shape of cylindrical power to correct for the wearer's astigmatism.

Regarding claims 4 and 11, it would have been obvious that the ophthalmic lens of Zhang and Juhasz would further include a second refractive surface that is a topographically-derived surface since it is well known in the art of contact lenses for one surface to be topographically-derived so that it will remain firmly fit on the eye of the user. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made for the ophthalmic lens of Zhang and Juhasz to further include a second refractive surface that includes a second refractive surface that is a topographically-derived surface since it is well known in the art of contact lenses for one surface to be topographically-derived so that it will remain firmly fit on the eye of the user.

Regarding claims 7, 8, and 14, Zhang further discloses that the first refractive surface is the front surface of the lens (Column 1, lines 14-29 and Column 2, lines 42-60, wherein the contact lens "10" is a multifocal lens which contains both distance and near optical powers, specifically the differing dioptric powers of the spiral pattern that correct for myopia and hyperopia located on the front "anterior surface" of the lens "12", Figure 2) and it would be

Art Unit: 2873

inherent that the second refractive surface is a back surface of the lens, this being reasonably based upon the second refractive surface being used to keep the lens firmly on the eye of the user.

### ***Response to Arguments***

Applicant's arguments filed February 4, 2004, have been fully considered but they are not persuasive. Specifically, the applicant argues that the Zhang reference does not disclose a refractive surface or areas of spherical distance power and spherical near power. However, Zhang discloses which discloses the spiral pattern of the lens as having a refractive index change (Column 2, line 7 and Column 3, lines 35-46); therefore the optical corrective surface is a refractive surface. In addition, Zhang discloses using a changing refractive index within the spiraling pattern i.e. a "refractive surface" (Column 3, lines 35-46) to create the distance and near optical power and not using a toric surface nor using this pattern to correct astigmatism or to generate cylindrical power and therefore the distance and near optical power generated by Zhang is "spherical" distance optical power and "spherical" near optical power.

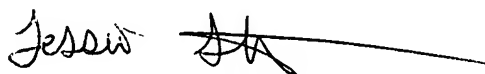
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica T Stultz whose telephone number is (571) 272-2339. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Epps can be reached on 571-272-2328. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2873

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jessica Stultz  
Patent Examiner  
AU 2873  
February 24, 2004



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